

REMARKS / ARGUMENTS

1. Specification

The Examiner has required correction of the Sequence Listing to add the protein sequence appearing on page 15 of the specification. The Applicant submits herewith a substitute Sequence Listing to which the protein sequence on page 15, nonapeptide sequence VQGEESNDK of IL-1 β , has been appended as SEQ ID NO. 14.

2. The Amendments to the Claims

Before this Amendment, claims 47-50 and 66-68 were pending. Upon entry of the present amendments, claim 47 and new claim 69 will be pending and under active consideration.

Claims 48-50 and 66-68 have been canceled without prejudice. The Applicant expressly reserves all rights to prosecute claims drawn to any subject matter removed by claim cancellation or by claim amendment made herein in a subsequent continuation application. Claim 47 has been amended to more particularly point out and distinctly claim the subject matter that the Applicant regards as his invention. New claim 69 has been added. No new matter is added by these amendments, and they are believed to place the claims in condition for allowance. The subject matter of the amended claims is fully supported in the specification and original claims as filed.

Claim 47 has been amended, as suggested by the Examiner, to clarify the antecedent basis by reciting "comprising a DNA selected from the group . . ." rather than "comprising said DNA selected from the group. . . ."

New claim 69 has been added. Support for new claim 69 is found *inter alia*, at page 5, line 20 to page 6, line 29; page 7, line 1 to page 8, line 25; page 9, lines 6-27, and page 10, line 19 to page 16, line 24 of the specification.

3. Claim Objections

The preamble of Claim 47 has been objected to for the use of the phrase "comprising said DNA selected from the group. . . ." As suggested by the Examiner, claim 47 has been

amended to recite “comprising a DNA selected from the group . . .”, thus overcoming the objection.

Claim 49 is objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of previous claim 47. The Examiner states at page 4, paragraph 2 that “[t]here does not appear to be a limitation in claim 47 [*sic*] that is not comprised within claim 49 [*sic*].” From the context of the preceding sentences in paragraph 2, the Applicant believes that the Examiner means that “there does not appear to be a limitation in claim 49 (*i.e.*, the dependent claim) that is not comprised within claim 47” (the independent claim from which claim 49 depends). However, to advance prosecution and obtain coverage for certain embodiments of the invention, the Applicant has canceled claim 49 without prejudice, thus rendering the objection moot.

4. Double Patenting

At page 5 of the Office Action, claims 50 and 68 are objected to under 37 CFR 1.75 as being substantial duplicates of claim 48 and 67. Sections i) – iv) of claim 48 recite “a recombinant DNA sequence that encodes a protein . . .” whereas sections i) – iv) of claim 50 recite “a recombinant DNA that encodes a protein . . .”. To advance prosecution and obtain coverage for certain embodiments of the invention, the Applicant has canceled claims 48, 50, 67 and 68 without prejudice, thus rendering the objection moot.

5. The Rejections

a. Examiner’s Rejection Under 35 U.S.C. § 102(b) Should Be Withdrawn

At page 6 of the Office Action, claims 48-50 and 66-68 were rejected under 35 U.S.C. 102(b), as being anticipated by Lewis *et al.* (1994, Sequence, organization, and evolution of the A+T region of *Drosophila melanogaster* mitochondrial DNA. Mol. Biol. Evol. 11: 523-538). While the Applicant does not in any way agree with this rejection, merely to advance prosecution and obtain coverage for certain embodiments of the invention, claims 48-50 and 66-68 have been canceled without prejudice and new claim 69 has been added. The Applicant expressly reserves all rights to argue against the rationale of the rejection and to

prosecute claims drawn to any subject matter removed by claim cancellation or by claim amendment made herein in a subsequent continuation application.

Notwithstanding their reservation, since claims 48-50 and 66-68 have been canceled without prejudice, the rejection with respect to these claims is moot. Reconsideration and withdrawal of the rejection of claims 48-50 and 66-68 as being anticipated by Lewis *et al.* is therefore respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, the Applicant believes that the application is in good and proper condition for allowance. Early notification to that effect is earnestly solicited. If the Examiner feels that a telephone call would expedite the consideration of the application, the Examiner is invited to call the undersigned attorney at (315) 425-9000.

If there are any other fees due in connection with the filing of this Amendment or accompanying papers, please charge the fees to Wall Marjama & Bilinski LLP's Deposit Account No. 50-0289. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to the Deposit Account.

Respectfully submitted,

Date: September 27, 2006

Anne M. Schneiderman 43,095
Anne M. Schneiderman (Reg. No.)

For: WALL MARJAMA & BILINSKI LLP
101 S. Salina Street
Suite 400
Syracuse, NY 13202
(315) 425-9000

Enclosures